

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
February 24, 2004**

PLACE: Auditorium
Town Hall

TIME: 8:00 P.M.

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Kenny, Forman, Spain and Conze

STAFF ATTENDING: Ginsberg, Keating

Chairman Damanti read the first agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #125-B, Flood Damage Prevention Application #123-B, John B. Ward, 32 Beach Drive. Proposal to construct additions and alterations to the existing residence and perform related site development activities within regulated areas. The subject property is located on the west side of Beach Drive approximately 225 feet south of its intersection with Outlook Drive, and is shown on Tax Assessor's Map #53 as Lot #6 in the R-1/2 Zone.

This matter will be continued on March 23, 2004.

Chairman Damanti read the following agenda item:

Business Site Plan #83-A/Special Permit, Commerce Bank, 714 Boston Post Road. Proposal to raze the existing structures on the premises and construct a new bank building with associated drive up aisles and parking and perform related site development activities. The subject properties are located on the south side of Boston Post Road, approximately 550 feet northeast of its intersection with Sedgwick Avenue, and is shown on Tax Assessor's Map #16 as Lots #101 and #103, in the DB-1 Zone.

The Commission members noted that the applicant has not yet had a Public Hearing with the Zoning Board of Appeals and it would not be appropriate to conduct the Planning & Zoning Commission Public Hearing until a decision has been rendered by the Zoning Board of Appeals. The Public Hearing on this matter was opened. The following motion was made: that the Commission continue the Public Hearing regarding this matter on March 23, 2004. The motion was made by Mr. Spain, seconded by Mr. Kenny and unanimously approved.

Chairman Damanti read the following agenda item:

Flood Damage Prevention Application #202, Land Filling & Regrading Application #116, Ralph & Rhonda D'Arinzo, 47 Greenwood Avenue. Request to allow regrading and previously placed fill to remain within a regulated area. The subject property is situated on the west side of Greenwood Avenue approximately 1,300 feet north of its intersection with Camp Avenue, and is shown on Tax Assessor's Map #8 as Lot #155, and located in an R-1/3 (residential) Zone.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 24, 2004
PAGE 2

Director of Planning Jeremy Ginsberg explained that the applicant did not properly notify the neighboring property owners and, therefore the Public Hearing would need to be postponed and rescheduled. Most likely, the Public Hearing will be rescheduled for March 23, 2004.

Chairman Damanti read the following agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #186-A, Flood Damage Prevention Application #198-A, Denis & Jennifer Manelski, 11 Pratt Island. Proposing to raze the existing residence, garage and greenhouse, and construct a new residence on the existing foundation with an addition, a garage, and a swimming pool, and perform related site development activities within regulated areas. The subject property is located on the south side of Pratt Island approximately 1,150 feet south of the intersection of Nearwater Lane and Baywater Drive, and is shown on Tax Assessor's Map #55, as Lots #121 and #122 in the R-1 Zone.

Attorney Robert Maslan was present to represent Mr. & Mrs. Manelski. Mr. Manelski was present along with Professional Engineer John Roberge.

Attorney Maslan explained that the application before the Planning & Zoning Commission concerns the coastal area management and flood damage prevention aspects of the project. They have obtained a ruling from the Zoning Enforcement Officer that the parcel of property is subject to the setback provisions of the 1953 Zoning Regulations because it was involved in a subdivision at that time. Under Section 8-26a of the Connecticut General Statutes changes of the Zoning Regulations enacted after the effective date of the subdivision are not applicable to the lot. Attorney Maslan said that this was in accordance with the court ruling in the Poirier case.

He said that the 1953 subdivision that was approved by the Planning & Zoning Commission showed this subject lot. He said that he submitted a request to the staff and that the Zoning Enforcement Officer, David J. Keating, had responded that the flood damage prevention and coastal area management regulations would still apply to the property because those portions of the Darien Zoning Regulations stem from different portions of the Connecticut Statutes other than the standard zoning enabling language. In his letter, Mr. Keating stated that the setback requirements of the Zoning Regulations in effect in 1953 would be applicable. Those regulations in effect in 1953 are the regulations dated July 23, 1952. Attorney Maslan submitted a copy of those regulations along with a copy of the February 13, 2004 letter from David Keating. He also submitted a signed copy of the Engineering Report from John Roberge with a follow-up letter. He said that the previously submitted copy of the report was unsigned.

Attorney Maslan said that the property contains 0.91 acres of land and is located in an R-1 Zone. A variance was granted in 1953 to legitimize the undersized lot. It is served by an existing, on-site septic system at this time. The plan is to knock down the existing house and accessory structures and to build a replacement house and garage and swimming pool. The new house would be connected to the sanitary sewer system that is now available. Attorney Maslan submitted photographs of the site and the surroundings. He pointed out that the greenhouse, garage and existing house will all be removed. He showed several elevation drawings of the proposed replacement house with attached three car garage. The submitted site plan also shows the proposed swimming pool.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 24, 2004
PAGE 3

Professional Engineer John Roberge said that he studied the existing and proposed conditions with respect to coastal flooding conditions. He ran the site conditions through the computer model and determined that the proposed house location is within the "A" flood zone and is not within the "V" flood zone that would involve wave velocities. The proposed house will be designed to withstand floodwaters inundating the area. Rainwater from the new impervious surfaces (the house and garage and patio area around the swimming pool) will be directed into a new gallery system that will consist of trenches on three sides of the swimming pool area. The gallery trenches will have sufficient volume to store the increase in storm water runoff and allow that runoff to percolate into the ground. The gallery and trench system will not stop or modify the coastal flooding conditions caused by rising waters of Long Island Sound.

Mr. Roberge said that the proposed swimming pool will also be located in the flood hazard zone and will need to be properly vented and designed to avoid any adverse impacts due to flooding. The pump filter system for the swimming pool will need to be located above the expected flood level and they will need to keep the pool filled to avoid ground water pressure from popping up the pool.

Mr. Roberge explained that, during a 100-year storm, the calculations show that waves as high as 6½ feet tall will hit the sea wall at the outer edge of the property. By the time the waves reach the pool area they will be much smaller because the sea wall and ground will dissipate the wave forces. Mr. Roberge said that the existing basement under the existing house will be filled in and that the replacement house will have a crawl space to comply with the Flood Damage Prevention regulations. The maximum height of the crawl space will be 5 feet.

Judy Slayback of Environmental Land Solutions said that she has visited the site on at least three occasions since the summer to review the coastal area management impacts that might be caused by the proposed construction activity. She noted that the proposed development will all be outside of the coastal resources except for the fact that the house and pool will be within the flood plain. She said that none of the construction activity is along the immediate shore line and there are no special, natural resources in the house or pool location. She said that the proposed development of the house and garage and pool are similar in location to the existing structures. The pool is to be placed in an area that is presently a lawn. She said that there are no coastal resources that would be adversely impacted by the proposed work.

John Roberge, P.E., reviewed his drainage report. He noted that the proposed development will slightly increase the amount of impervious surfaces on the property and that they are dealing with the increased runoff from the impervious areas with the gallery and trench system. He said that coastal flooding will not be adversely affected or impacted due to the proposed construction activity. He said that his detailed analysis of the flooding conditions of the site do not result in a major or significant modification of the flood zone boundary. His conclusions are only a detailed interpretation of the generalized information on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM). He said that it is not necessary for the property owner to seek a letter of amendment or revision of the Flood Insurance Rate Maps. Mr. Roberge said that the seawall is not changing as part of this proposed redevelopment of the property.

Mr. Roberge said that storm water runoff from the driveway will be collected into catch basins and then piped directly into Long Island Sound. He said that there is no need to increase or change the pipe size. He said that there is no filter that he knows of to catch potential contaminants on the

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 24, 2004
PAGE 4

driveway before they enter Long Island Sound. He said that they could retrofit a filter system into the catch basin and pipe drainage system that is presently in place. He said that his original analysis was performed in August 2003 and at that time the proposed house and driveway areas were larger. Since then, the proposed development activities have been revised and downsized. In response to a question from a Commission member, Mr. Roberge said that they could revise the plans even further to reduce the amount of impervious areas.

Attorney Maslan said that the zoning setback requirements in the current regulations are different from the zoning setback requirements that were in effect in 1953 (when this parcel was involved in a subdivision). Under the current regulations, the right-of-way leading out to the island is not considered a street and, therefore all of the lot lines of this property are rear lot lines and have a 40 foot setback requirement. In 1953, however, the right-of-way was considered like a street and a 40 foot setback was required from the boundary separating the right-of-way from the lot. Twenty five foot side yard requirements were applied to the west and east boundary lines. He said that the lot does not meet the current 150 feet width requirement and that it does not have frontage on a street as defined by today's regulations. Attorney Maslan said that the flood regulations are not treated under Section 8-26(a) of the regulations. That is one reason that they will be eliminating the existing basement and replacing it with a crawl space. He said that the 1953 regulations would allow them to build a structure three stories high with no limit on the height as measured in feet above the ground level. He said that the proposed house has been designed to comply with the current zoning regulations with respect to height, that being 30 feet maximum and a 2½ story maximum. In response to a question regarding proposed legislation that would put a time limit on Section 8-26(a) rulings, Mr. Maslan said that such a modification of the legislation has not yet been adopted and, even if were, would not impact this lot due to the pending application.

There was some discussion about the cupola which may be an issue that needs more investigation. The size of the cupola would appear to exceed the typical limitations of the current regulations and it does not appear that a cupola was exempt from the 1953 height limitations.

Attorney Wilder Gleason represented Mr. & Mrs. Mills who own adjacent property to the west. He said that a previous application for variance was submitted to the Zoning Board of Appeals. That application was denied. Subsequent to that denial by the ZBA, the applicant has requested a ruling under Section 8-26(a) and received that ruling in a letter dated February 13th. Mr. Gleason said that he only found out about the ZEO's ruling about a week prior to this Planning & Zoning Commission meeting and that he has filed an appeal of the Zoning Enforcement Officer's decision because there are substantial irregularities between this property and the standard findings necessary under Section 8-26(a) of the statutes. He asked for a continuation of the Planning & Zoning Commission hearing so that the Zoning Board of Appeals could render a decision regarding the Zoning Enforcement Officer's ruling. He said that the Section 8-26a ruling is the cornerstone of the applicant's request for the proposed house location. If the ZEO's ruling is overturned or modified by the ZBA or the courts, then the Planning & Zoning Commission's deliberations and decision would be moot.

Mr. Spain said that if the Planning & Zoning Commission processes the application and closes the Public Hearing and eventually approves the application, but it is later determined that Section 8-26(a) of the Statutes is not applicable, or if the Zoning Enforcement Officer's ruling is overturned, then the Planning & Zoning Commission's approval would be void. In response to questions about

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 24, 2004
PAGE 5

a possible continuation, Director of Planning Jeremy Ginsberg said that the Public Hearing was started in January and by Statutes it must be concluded by March 2, 2004.

Jim Friend of Nash Island said that there is a crown in the grade of the Manelski property. Storm water runoff and flooding water covers the low swampy or marshy area to the east before it covers the driveway and other portions of the Manelski property. Water from the high portions of the Manelski property flows down toward the swamp and marsh area. This low area floods even in high tide conditions without any rain or storm event. Mr. Friend said that he did not think that the applicant had adequately addressed this issue. John Roberge said that there would be no change in the grades and, therefore no change in the flow of water toward the marsh area. He said that increases in impervious roof area will be directed into the underground galleries.

Attorney Maslan said that he filed the request for decision regarding Section 8-26(a) of the statutes in December and it took approximately two months to get that decision from the Zoning Enforcement Officer. He said that he had sent a set of the revised plans to Mr. Mills several weeks ago because the revised plans are very different from what the Zoning Board of Appeals had reviewed and denied several months ago. Mr. Maslan did not grant an extension of the time period to keep the Public Hearing open. The Commission members agreed that they should continue the Public Hearing to allow Mr. Gleason to prepare his comments regarding the proposal and/or to hire an expert to analyze the drainage conditions if he felt that would be appropriate for his clients. The Commission noted that, lacking an extension from the applicant, they must conclude the Public Hearing by March 2, 2004. The following motion was made: that the Commission continue the Public Hearing on March 2, 2004. A motion was made by Mr. Kenny, seconded by Mr. Spain and unanimously approved.

Mr. Damanti then read the next agenda item:

Special Permit Application #221-D, Cellco Partnership d/b/a Verizon Wireless, 4 Tower Drive.

Proposing to install wireless telecommunications antennas (twelve panel antennas) on top of the concrete water tank within a new "cap" on the existing concrete shell, and to install an equipment shelter within the existing tank housing. The subject property is located on the south side of Tower Drive approximately 250 feet east of its intersection with Mansfield Avenue, and is shown on Tax Assessor's Map #1 as Lot #136, R-2 Zone.

Attorney Kenneth Baldwin represented Verizon Wireless and explained that the water tank is covered by a silo shaped concrete shell that is referred to as the Water Tower. The Planning & Zoning Commission has previously granted approvals for antenna installations for four companies. One of those companies, Verizon Wireless, allowed their approval to lapse. The antennas for Sprint and AT&T have been installed within the shell of the Water Tower and coated with the radio frequency transparent material. In the springtime, the top portion of the Tower is to be painted to blend in the antenna covers with the rest of the tower. There is no additional space left within the existing tower structure to mount the Verizon antennas. In order to accommodate the antenna installation, Verizon had previously proposed and been approved for the installation of a cap to be installed on the Tower. The peak of the Tower would remain unchanged but the outside wall of the Tower would be increased by several feet in height. A new roof would be placed on the existing Tower. Material would be blended with the existing Tower to the greatest extent possible.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 24, 2004
PAGE 6

Attorney Baldwin explained that the proposed antennas would be located 108 feet above the ground. The equipment for the Verizon system will be located within the base of the Tower. The fourth carrier that has been approved on the site is Nextel. Their approval has not yet been implemented. The Nextel approval had called for the installation of a separate shelter building to house the Nextel equipment. Mr. Baldwin said that Verizon cannot use the 88 foot elevation that has been reserved for Nextel because of the required separation between antennas and because the elevation would be too low for the Verizon equipment.

The antennas for Sprint and AT&T are located 98 feet above ground level. Attorney Baldwin said that within the new cap to be installed by Verizon, there will be room for one other carrier so that a fifth carrier would not need to install another cap or construct a new tower.

Attorney Baldwin explained that the radio frequencies used by the telecommunications systems are separate and discreet to minimize interference. In addition to regular telephone service, Verizon has now been licensed as a PCS provider so that they can also offer data services in addition to voice services. He said that this new technology will not create any interference with existing reception or transmission at the Tower. The antennas will not look any different from what was previously approved. In response to questions about the structural integrity of the Tower, Attorney Baldwin said that apparently the existing concrete roof of the shell cannot be cut and they have performed the necessary stress test analysis to verify that the side walls of the Tower will be structurally sound.

Mrs. Nancy Hargraves of Tower Drive said that the Tower is located in a residential zone and that someone has removed many trees as part of the antenna installation. She questioned the location of the equipment and wondered if it would require a shed or trailer like structure. Attorney Baldwin said that the Fire Department antenna and one small location antenna are the only antennas located on the exterior of the Tower. He said that AT&T's antennas were moved from the outside of the Tower to the inside of the Tower and that the tree cutting was not done in conjunction with the antenna installations.

Jill McCabe of 34 Tower Lane said that the Water Tower site has constant activity and that there are many workmen and trucks at the site. She said that the ramshackle condition, porta-potty, and constant activity make it look like a truck stop instead of a water tower in a residential zone.

Tom McCabe wanted the Commission members to note that the Tower is in a residential zone and that the commercial use of the Tower for the installation and operation of antennas is not appropriate. He said that the house at 29 Tower Lane is for sale at this time but has a lesser value due to the Tower and the activity at the site. He said that the houses in the area have had much less appreciation than normal homes in Darien. Mr. McCabe said that raising the Tower even higher will devalue his home and that the contractors, communication companies and Commission must take responsibility for their actions. He said that he was not notified of the meeting and wondered why not. He also said that the site needs to be better maintained.

Mrs. McCabe said that there are health risks associated with radio wave transmission and that the long term health impacts will not be fully known for many years.

Attorney Baldwin said that there are many Verizon antennas located in residential zones and that the Planning & Zoning Commission's own regulations recognize that such antennas will be located in

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 24, 2004
PAGE 7

residential zones to provide complete coverage. The Commission's regulations emphasize utilizing existing tower structures wherever possible rather than constructing new towers. He noted that they are not extending or increasing the height of the peak of the Tower and that the new cap will be painted to match the existing Tower. He said that all of the equipment for the Verizon antennas will be located within the Tower.

Attorney Baldwin said that the radio frequency information is submitted to the Commission but noted that the Federal Communications Commission has jurisdiction over the radio frequency matters. Federal legislation specifically precludes local jurisdictions from denying antennas based on potential health or safety risks based on radio waves. Attorney Baldwin said that they have submitted with the application material certification that the R.F. waves will be only 10% of the allowable emissions. He also said that they will work with the water company to clean up the site and to keep it neat.

He said that they will also check out about the removal of trees but, he said that that might have been done by the power company or a contractor for the other installation.

Commission member Conze said that the water company owns the property and they should be present or at least have a representative at the meeting so that they could address the maintenance and use issues.

In response to questions, Mr. Baldwin said that the maximum 10% emission is based on the assumption that there will be maximum output from the antennas and that the antennas would be located at 108 feet above ground level. He said that there is no more space for antennas at the 98 foot level (where Sprint and AT&T antennas are located). Attorney Baldwin asked that the information from the previously approved Verizon application be incorporated into the current record of the Planning & Zoning Commission application. Commission members agreed. Attorney Baldwin said that he will try to provide additional information if the Commission so desires. Commission members discussed the situation and felt that they needed more information about the coverage that could be accomplished if the antennas were located 88 feet above ground instead of 108 feet above ground and about the clean-up and maintenance of the site. The following motion was made: that the Commission continue the Public Hearing on March 2, 2004 so that additional information from the neighbors and applicants can be received. The motion was made by Mr. Kenny, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

Coastal Site Plan Review #163-C, Flood Damage Prevention Application #170-C, T. Mark & Margaret Maybell, 23 Tokeneke Trail. Proposing construction of a new terrace on the east edge of the site to serve as a landing for a new floating dock; construction of a new gangway and float; and performance of related site development activities within regulated areas. The subject property is located on the south side of Tokeneke Trail approximately 1500 feet southwest of its intersection with Runkenhage Road, and is shown on Tax Assessor's Map #69 as Lot #38, R-1 Zone.

John Roberge represented the applicant and explained that the previous application to the Planning & Zoning Commission had involved modifications to the seawall and reconstruction of the house. This approval is for the installation of the facilities leading to a proposed dock that will extend out into the waters of Scot's Cove. He explained that the proposed floating dock will be 100 square feet in size

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 24, 2004
PAGE 8

and will not extend more than 40 feet from the mean high water line. Approval from the Connecticut Department of Environmental Protection Commission has been obtained. Mr. Roberge said that no coastal resources will be impacted due to the proposed activity. He said that the proposed dock structure has been designed to withstand the 100 year flood event.

Director of Planning, Jeremy Ginsberg, said that the plan was referred to the Connecticut Department of Environmental Protection for comment. Their only comment was that the DEP Permit process will need to be finalized.

There were no comments from the public. Commission members had reviewed the plan and had no comments or questions of Mr. Roberge.

The following motion was made: that the Commission close the Public Hearing regarding this matter. The motion was made by Mr. Conze, seconded by Mr. Spain and unanimously approved.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #115, Graham Albutt, 11 Tulip Tree Lane. Proposing to redesign existing driveway and parking area; install an in-ground pool; install associated landscaping/terracing; and perform related site development activities. The subject property is located on the west side of Tulip Tree Lane approximately 800 feet southwest of its intersection with Deerfield Road, and is shown on Tax Assessor's Map #33 as Lot #45-4, R-1 Zone.

Chris Schmidt of Glen Gate Company explained that his company will be installing the swimming pool and, as part of the plan, they will be doing some revisions to the driveway and some regrading of the property around the swimming pool. Approvals have already been obtained from the Environmental Protection Commission and Zoning Board of Appeals. They have also obtained a permit from the Sewer Commission to do work within their jurisdiction.

The Special Permit Application is submitted to the Planning & Zoning Commission because some of the regrading will be within 15 feet of the property boundaries. Mr. Schmidt said that all of the regrading in proximity to the boundary lines will involve cutting into the existing slope, that is, reducing the grade adjacent to the property lines. He said the maximum depth of the cut will be about two feet in close proximity to the swimming pool. Near the driveway, the maximum cut will be approximately 3'6".

The Commission members reviewed the plans and project and asked no questions. There were no questions or comments from the public. The following motion was made: that the Commission close the Public Hearing regarding this application. The motion was made by Mr. Conze, seconded by Mr. Spain and unanimously approved.

The Commission entered the General Meeting at 10:15 p.m.

Approval of Minutes

February 3, 2004	Public Hearing/General Meeting
February 10, 2004	General Meeting

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 24, 2004
PAGE 9

The minutes from February 3, 2004 were approved. The motion was made by Mr. Spain, seconded by Mrs. Forman and unanimously approved. The minutes from February 10, 2004 were approved. The motion was made by Mr. Kenny, seconded by Mr. Conze and unanimously approved.

Discussion and deliberation regarding the closed public hearing items.

The Commission members briefly discussed the applications but no formal actions were taken.

There being no further business, the meeting was adjourned at 10:25 p.m.

Respectfully submitted,

David J. Keating
Assistant Director of Planning